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Utah Supreme Court

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William D. Oswald; Fox, Edwards and Gardiner; G. Blaine Davis, Esq.; Paulsen, Lauchnor and Davis. Bill Thomas Peters; Special Deputy County Attorney .

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UTAH SUPREME COURT
BRIEF

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IN THE SUPREME COURT

OF THE STATE OF UTAH

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SALT LAKE COUNTY, a body politic, by and through its County Board of Equalization, State of Utah,

Appellant,

-vs-

TAX COMMISSION OF THE STATE OF UTAH, ex rel. Utah Transit Authority,

Respondent.

Case No. 86-0217

Priority Category 13-a

--ooOoo--

BRIEF OF RESPONDENT

APPEAL FROM THE DECISION OF THE
TAX COMMISSION OF THE STATE OF UTAH
April 2, 1986

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FILED

JUL 29 1986

Clerk, Supreme Court, Utah

IN THE SUPREME COURT

OF THE STATE OF UTAH

--ooOoo--

SALT LAKE COUNTY, a body politic, by and through its County Board of Equalization, State of Utah,	:	
Appellant,	:	
-vs-	:	Case No. 86-0217
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STATEMENT OF ISSUES PRESENTED ON APPEAL

Is the seventy (70) acres of unimproved land, which is owned by the Utah Transit Authority (UTA) contiguous to its bus garage and administrative offices, and held for future expansion of UTA, exempt from ad valorem property taxation?

STATEMENT OF FACTS

In 1969 the Utah Legislature passed the Utah Public Transit District Act, Sections 11-20-1, et. seq., Utah Code Annotated, 1953, as amended, and U.C.A. Section 11-20-2 set forth the concerns of the Legislature in adopting those provisions, and it stated:

> The legislature hereby finds and declares:
> (1) That the predominant part of the state's population is located in its rapidly expanding metropolitan and other urban areas which generally cross the boundary lines of local jurisdictions and often extend into two or more counties;
>
> (2) That usage of present public urban transit systems has been declining while cost of operation has been increasing, so that present public transit systems have been forced to curtail services rendered, and their plans and equipment have been deteriorating with the result that they are unable to provide the type of service needed by citizens and are unable to plan, establish and co-ordinate area-wide metropolitan public transit systems;
>
> (3) That the welfare and vitality of urban areas, the satisfactory movement of people within these areas, the lessening of traffic congestion and the effectiveness of housing, tourist, highway and other governmental programs, are being jeopardized thereby; and
>
> (4) That the problems involved in adequately furnishing public urban transportation for the present and future needs of the people of the state are of such

magnitude and complexity that the various urban transit systems, municipalities and counties acting individually, lack the ability, finances and jurisdiction to resolve, establish and co-ordinate urban transportation.

Therefore, it is essential to establish a public agency known as a transit district which can operate in its own right and authority and exercise jurisdiction without being restricted to municipal corporate or county limits, governed by representatives of the governmental unit lying within the district. It is the purpose of this act to provide the means necessary for mass transportation of person presently and in the future. (Emphasis added)

The Legislature then added, in U.C.A. Section 11-20-3:

"This act shall be liberally construed to carry out the object and purposes and the declared policy of the state of Utah as in this act set forth."

In response to the legislative mandate contained in the Utah Public Transit District Act, the Utah Transit Authority, hereinafter referred to as "UTA" was established, and is the first and largest public transit district in Utah. The UTA currently serves the residents of Salt Lake, Davis and Weber Counties, Provo City, and Orem City, with some allied service to Tooele and Box Elder Counties. UTA service is presently available to approximately seventy five percent (75%) of the residents of the State of Utah.

Public transit districts were given broad general powers (U.C.A. Section 11-20-16) but the districts were not given the power of eminent domain. Therefore, in the mid-1970's, when UTA outgrew its downtown bus terminal facility it attempted to acquire the adjoining property, but without the power of eminent domain, it was unsuccessful in its attempt to acquire that

property. Then, the UTA acquired two separate options on two separate parcels of property, but was unsuccessful in obtaining conditional use permits to construct its needed facilities because of the strong objections and hostilities of the local neighborhoods.

Finally, after substantial searching for the right location, and at the urging of the Salt Lake County Commission, on October 2, 1978, the UTA acquired a parcel of approximately 110 acres at approximately 700 West and 3600 South in Salt Lake County. The parcel of property was large enough for the construction of the new bus garage and administrative offices on approximately 40 acres, and still leave sufficient room for anticipated mass transit growth and expansion on the remaining parcel. The additional land was needed not only to provide for the expansion of UTA's bus operations, but also to provide a home base for a high-speed, light rail system currently being planned by UTA and the Wasatch Front Regional Council, the metropolitan planning organization for the five-county area of Salt Lake, Davis, Weber, Morgan and Tooele Counties. (R. 42-43, 70, and 81). The property is located near freeway exits and existing railroad rights-of-way, and may thus be used for either expansion of the bus facilities or for a high-speed, light rail system.

When construction was commenced on the property, a sewer system and main road were installed which will be adequate to serve the entire 110 acre parcel, and then four (4) buildings were constructed on forty (40) acres to serve as bus garage, bus wash, service facilities and administrative offices. The

remaining seventy (70) acres of land is being held for future expansion of UTA.

From 1970, the date UTA was organized, until 1980, a period of more than ten (10) years, UTA was considered a totally tax exempt entity and was never assessed or taxed by Salt Lake County or any other county in the State.

In 1981, the Salt Lake County Board of Equalization attempted for the first time to impose an ad valorem tax on UTA and held that the vacant seventy (70) acre parcel was subject to ad valorem property taxes. The Utah State Tax Commission in both a formal and informal opinion, overruled that decision and held that the property was exempted from taxation by the Utah Constitution (R. 0019 to 0023). UTA requests that this Court affirm the decision of the Tax Commission.

The parties have agreed by stipulation that the final decision in this case will determine the taxability or exemption of the subject property for the years 1981, 1982, 1983 and 1984, and because of the passage of time the decision will also certainly determine those issues for 1985 and 1986. Therefore, because the relevant constitutional provision (Article XIII, Section 2, Utah Constitution) was amended effective January 1, 1983, and further because certain statutory provisions were amended and/or repealed effective January 1, 1986, it will be necessary in this brief to occasionally differentiate between the existing provisions and the former provisions. However, it is respectfully submitted that the changes in those provisions would not change the result but would only slightly modify the process

of reaching that result.

ARGUMENT

POINT I

THE UTAH CONSTITUTION, ARTICLE XIII, SECTION 2 MAKES THE PROPERTY EXEMPT FROM AD VALOREM PROPERTY TAXES

A. THE UTAH CONSTITUTION, ARTICLE XIII, SECTION 2, EXEMPTS ALL PROPERTY OF ALL GOVERNMENTAL ENTITIES.

Article XIII, Section 2 of the Utah Constitution establishes the basic requirement that all property within the state must be taxed on a uniform basis, and it also establishes the basic exemptions from ad valorem property taxes. Before January 1, 1983, the provision requiring taxes was as follows:

> "All tangible property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed in proportion to its value, to be ascertained as provided by law."

Effective January 1, 1983, that provision was amended slightly to read:

> "(1) All tangible property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed at a uniform and equal rate in proportion to its value, to be ascertained as provided by law."

Both of those provisions require that except for exemptions established by Federal law, the only property tax exemptions are those which are specifically set forth by the Utah Constitution, i.e., that the legislature is prohibited from establishing any

additional classifications of property that can legally be exempt from ad valorem property taxes. Further, since the Legislature may not establish any further exemptions, they likewise may not in any way limit or proscribe any exemptions which are established by the Utah Constitution.

Article XIII, Section 2 of the Utah Constitution then establishes the exemptions from ad valorem property taxes, and the relevant portions of that section for all periods prior to January 1, 1983 provided:

> The property of the state, counties, cities, towns, school districts, municipal corporations and public libraries, lots with the buildings thereon used exclusively for either religious worship or charitable purposes, and places of burial not held or used for private or corporate benefit, shall be exempt from taxation. (Emphasis added)

The relevant portions of that section for periods after January 1, 1983 provides:

> (2) The following are property tax exemptions:
> (a) The property of the state, school districts, and public libraries;
> (b) The property of counties, cities, towns, special districts, and all other political subdivisions of the state, except that to the extent and in the manner provided by the Legislature the property of a county, city, town, special district or other political subdivision of the state located outside of its geographic boundaries as defined by law may be subject to the ad valorem property tax;
> (c) Property owned by a nonprofit entity which is used exclusively for religious, charitable or educational purposes: (Emphasis added)

Regarding the former constitutional provision, UTA is clearly a "municipal corporation" as that term is used and was meant to apply to all other governmental entities. However, in

this case it is not necessary to resort to the many varied agencies included in the broad definition of "municipal corporations." UTA is clearly a public transit district established pursuant to the provisions of the Utah Public Transit District Act. U.C.A. Sections 11-20-1, et seq. U.C.A. Section 11-20-58, a portion of that act, specifically makes public transit districts subject to the Utah Municipal Bond Act, and U.C.A. Section 11-14-1, a part of the Utah Municipal Bond Act specifically defines "municipality" to include public transit districts. Therefore, it seems clear that the UTA as a public transit district is a municipality, and as a municipality it is a "municipal corporation" within the meaning of Article XIII, Section 2 of the Utah Constitution and its property is exempted by that constitutional provision from ad valorem property taxes for all periods prior to January 1, 1983, and the assessments of the UTA property for 1981 and 1982 must fail.

For all periods after January 1, 1983, (1983, 1984, 1985 and 1986 taxes) the constitutional provision (Article XIII, Section 2) specifically exempts "The property of counties, cities, towns, special districts, and all other political subdivisions of the state...." It is respectfully submitted that the UTA, as a public transit district is clearly a "special district" within the meaning of the constitution, and as a municipality under the Utah Municipal Bond Act is clearly an "other political subdivision" within the meaning of the constitution. Further, Section 63-30-2 U.C.A. defines the words "Political subdivision" for purposes of the Governmental Immunity Act to include "public

transit districts" and "special improvement or taxing districts or other governmental subdivisions or public corporations."

Therefore, it is clear that under both the former and present constitutional provisions the properties of the UTA are exempt from ad valorem property taxes.

Salt Lake County, in fact, in its brief, seems to accept that principal that the properties of the UTA are exempt from taxes, because the county has conceded the tax exempt status of forty (40) acres of improved property owned by the UTA. If the Utah Constitution requires the properties of the UTA to be taxed, then neither the county or the state legislature may exempt those properties from taxes, but likewise, where the Utah Constitution specifically exempts the properties of the UTA from taxes, then the county and the state legislature are powerless to attempt to impose taxes on any portion of those properties.

The county is attempting to persuade this Court to interpret the constitution to include a "use" test on the tax exemption for governmental owned property when the constitution does not include any such requirement. A careful analysis of the former and present provisions of Article XIII, Section 2 of the Utah Constitution will show that for individuals or entities claiming an exemption from taxes for chartable purposes, the property must have been "used exclusively for charitable purposes," and therefore the actual "use" of the property must be reviewed. However, if the exemption from taxes is claimed by a governmental agency then the exemption is based upon the "ownership" of the property and not upon the "use" of the property, i.e., for the

charitable exemption the criteria for exemption is "use" of the property, but for governmental exemptions the criteria is "ownership" of the property.

These long established principals were first stated by the Supreme Court of Utah in 1894 in the case of City of Springville v Johnson, 10 Utah 351, 37 Pac. 577. In that case, the City of Springville had acquired approximately 900 acres of land within its corporate limits. The land was not used for any corporate purpose, but was rented for pasturage of cattle from which the city derived revenue. The Court held that the use or non-use of the property was not important, but the exemption from taxes was based solely upon ownership by the governmental entity. The Court in the Springville case stated:

> Appellant's counsel have devoted the greater part of their brief in citing authorities on the constriction of statutes. We do not deem it necessary to devote attention to them, for, while they are doubtless good law when applied to statutes whose language is ambiguous, in this case the exemption from taxation of the property of cities is so clear and expressive that there would seem to be no room for any doubt, or necessity or resorting to any rule of construction. The exemption is absolute, and depends upon no condition but ownership by the city. Railroad Co. v. Dennis, 116 U.S. 665, 6 Sup. Ct. 625. (Emphasis added)

In that case, even though the city owned 900 acres that was not being used for any city purpose and for which the city had no future needs or plans, the Court refused to review the use or non-use of the property and ruled that the exemption depended upon no condition but ownership by the city.

B. THE CONSTITUTIONAL EXEMPTION FROM PROPERTY TAXES FOR ALL PROPERTY OWNED BY GOVERNMENTAL ENTITIES IS SELF-EXECUTING, AND CANNOT BE MODIFIED, ALTERED, AMENDED OR CHANGED BY THE LEGISLATURE.

Salt Lake County, in its brief submitted to this Court, has implied that U.C.A. Section 11-20-55 makes the property of the UTA taxable even if the Utah constitution specifically makes the property exempt from ad valorem taxes. However, one of the most basic and fundamental principles of jurisprudence is that a constitutional provision has supremacy over a statutory provision, and if there is any conflict between a constitutional and a statutory provisions, the constitutional provision must govern.

Legislation is frequently enacted to implement constitutional provisions, and in this case U.C.A. Section 59-2-1 has been enacted to define the property tax exemptions in question in this proceeding. However, the statute quotes the constitutional provision on a word for word basis, although whereas the constitution was amended affective January 1, 1983, the statute was not amended at the same time and the effective date of the new statute is January 1, 1986. Nevertheless, it is submitted that even if the statute had never been enacted or amended the property of the UTA would be exempt because of Article XIII, Section 2 of the Utah Constitution.

In state constitutions, provisions which grant powers to governmental entities are normally interpreted to be nonself-executing, and therefore legislation must be enacted before a

governmental entity may implement those powers. However, when a state constitution limits the powers of governmental entities those limitations are self-executing, and those limitations are effective to prohibit the proscribed actions with or without further, legislative enactments. Constitutional provisions may also be self-executing if they can be interpreted and go into immediate effect without the necessity of any legislation.

Thus, in referring specifically to Article XIII, Section 2 of the Utah Constitution, it is submitted that it contains both self-executing and nonself-executing provisions. The portion of that provision which requires that all tangible property must be taxed at a uniform and equal rate appears to be nonself-executing because it requires implementing legislation to define the tax rate, the assessment rate, the procedures to determine the assessment and tax rates, the rights of appeal and many other factors before it can be implemented. It is, therefore, nonself-executing so no taxes may be imposed until authorizing legislation is enacted.

On the other hand, the portions of Article XIII, Section 2 which grant the property tax exemptions in question in this proceeding are limitations on the power of the legislature and they can be fully understood without interpretative legislation, and they can go into immediate effect without any legislation, and therefore, the exemption provisions are self-executing.

These principals have been referred to by the Utah Supreme Court in, In Re Montello, Salt Co., 53 P.2d 727,88 Utah 283, wherein the Court, quoting other sources stated:

> Constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed. 12 C.J. 729, Section 106.
>
> A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected or the duty imposed may be enforced; and it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law. Cooley's Const.Lim. (8th Ed.) p. 167.

In referring to these principles, 16 C.J.S. Constitutional Law, Section 46 contains the following statements:

> The framers of a constitution may provide that some of its provisions be self-executing and where the matter with which a given section of the constitution deals is divisible, one clause thereof may be self-executing and the other clause or clauses may not be self-executing. Generally, a provision is self-executing when it can be given effect without the aid of legislation and there is nothing to indicate that legislation is contemplated in order to render it operative; otherwise stated, constitutional provisions are self-executing if they supply a sufficient rule for their implementation, or when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed.
>
> * * * *
>
> [T]he legislature may neither abridge, extend, or otherwise alter a self-executing constitutional provision, and only such supplementary legislation is permissible as is in furtherance of the purpose, or as will facilitate the enforcement on operation of such provision, and legislation which will impair, limit, or destroy rights granted by the provision is not permissible.

It is submitted that the tax exemption provisions of Article XIII, Section 2, supra, are self-executing and are effective

without any legislation, and that the legislature may neither expand or limit those tax exemptions. The former provision exempted property owned by "municipal corporations", and the present provision exempts property owned by "special districts, and all other political subdivisions of the state." The property of the UTA is exempt from taxes under both provisions, and the legislature may not in any way modify, alter, amend or change that tax exemption, nor may they impose taxes on any portion of the property of UTA that is constitutionally exempt from taxes. The exemption is constitutional, not statutory, and the constitutional provision establishing the exemption is self-executing and may not be tampered with by the legislature.

C. SECTION 11-20-55, UTAH CODE ANNOTATED DOES NOT PROVIDE FOR, OR REQUIRE, TAXATION OF THE UTA PROPERTY.

Salt Lake County, in its brief, contends that Section 11-20-55, Utah Code Annotated, 1953, as amended, requires that taxes be imposed on the UTA property which is the subject of this proceeding. The County takes the position that the UTA property is not directly connected with transportation purposes, and therefore the tax exemption does not apply.

It is respectfully submitted that in taking those positions Salt Lake County, is in error both in its understanding of the facts and in its interpretation of the law.

In taking the above position, the County does not take exception to the Findings and Conclusions of the Utah State Tax Commission in so far as they found and concluded that the Utah

Transit Authority is a public transit district organized pursuant to the provisions of the Utah Public Transit District Act, supra, and as such the UTA constitutes a "special district" or "other political subdivision of the state" within the meaning of Article XIII, Section 2 of the Utah Constitution, nor that there is a specific grant of a tax exemption by that constitutional provision. Since the County did not challenge the grant of a tax exemption on the forty (40) acres on which UTA has constructed buildings and other improvements, it is presumed that the County agrees that the tax exemption on the forty (40) acres is correct based upon the above findings and conclusions.

Section 11-20-55, supra, provides:

> Title to all property acquired under the provisions of this act shall immediately and by operation of law vest in the transit district, in it corporate name, and is hereby dedicated and set apart for the purposes set forth in this act and shall be exempt from all taxation, including sales and use taxes, provided that such tax exemption shall not apply to property not used solely for transportation purposes or directly connected therewith. (Emphasis added)

The County takes the position that the forty (40) acres is "used solely for transportation purposes" but the seventy (70) acres is not used solely for such purposes. However, the County fails to interpret that statute in conjunction with the Constitution, and it also fails to consider the portion of the statute that states "or directly connected therewith."

In making its argument, the County is attempting to make an argument similar to that which was made in Duchesne County v. State Tax Commission, 104 Utah 365, 140 P.2d 335. In that case,

the State Land Board had foreclosed on a mortgage on certain lands which had been part of the lands granted to the State of Utah by the United States by the Utah Constitution upon attaining Statehood. Duchesne County attempted to impose ad valorem taxes on the land held by the State of Utah, in a trust capacity for the school system, and Duchesne County claimed that the lands were held by the State in a propriety capacity and not in its governmental capacity. The issues in that case were stated by the Court as follows:

> The Commission contends that under the provisions of Section 2 of Article 13, of the State Constitution, and of Section 80-2-1, U.C.A. 1943 (R.S.U. 1933), the lands in question being property of the state, are exempt from taxation. The county argues that the exemptions therein provided apply only to property which the state acquires and holds for the benefit of the public, that is, in its political or government capacity, and do not apply to property which the state acquires and holds as a result of an economic or business venture, or as an express trust for a specific purpose and not for the public generally that is, in what is generally called a private or proprietary capacity. The trial court upheld the County's construction.

The Utah Supreme Court, however, in that case reversed the District Court and held that even though the funds within the trust fund were not held exclusively for the use of the state but would also benefit individual members of the public, nevertheless, the properties were still "property of this state" for purposes of the tax exemption provisions, and thus were exempt from ad valorem property taxes.

The Court in the Duchesne County case, citing the South Dakota Supreme Court in State v. Board of Commissioners of Beadle County, 53 S.D. 609, 222 N.W. 582, 586, stated:

> We therefore hold that there cannot be successfully maintained, as a matter of law, in this state, under the circumstances here involved, a distinction between what has been frequently denominated as a 'sovereign" and 'nonsovereign' capacity of the state. (Emphasis added by the Court)

The Utah Supreme Court then concluded:

> Since the constitution created the state solely for governmental purposes, any right, duty or obligation it imposes upon the state, must ipso facto be a governmental one. Here the trusteeship of the fund was vested in the state by the Enabling Act as a condition of statehood, as a condition to the right of the state to be born, and imposed upon the state at its birth by the instrument of its creation as a condition of its life as a government. It must therefore be held by the state in a governmental capacity. It therefore comes within the constitutional exemption from taxation as property of the state. (Emphasis added)

In the Duchesne County case, supra, Justices Wolfe, McDonough and Wade each wrote concurring opinions which are contained at pages 343-344. Justice Wolfe stated:

> The basis of my concurrence is that lands, title to which is acquired by the state by foreclosure of mortgage or conveyance for extinguishment of a debt for money loaned from the State School Fund, are exempt from taxation because they are within the meaning of the words "property ***, of the State" as used in Sec 2 of Art. 13 of our Constitution." (Emphasis added)

Justice McDonough stated:

> I concur in the order reversing the judgment. I do so on the ground that the Constitution of the State of Utah provides that "the property *** of the state *** shall be exempt from taxation." Land, the title to which is acquired by the state, by foreclosure or grant, is property of the state. The framers of the constitution did not expressly or by implication limit the exemption of state property to that acquired in any particular manner or for any particular purpose. Therefore, we need inquire no further, in determining the taxability of these lands, than to find whose property they are. Finding that they are the property of the state requires a declaration that they are exempt from taxation. (Emphasis added)

Justice Wade stated:

> I concur in the result on the ground that this is the *kind of property that was intended under our* constitution and statutory provision to be exempt from taxation, it being held in trust for the benefit of the schools, and it is immaterial whether it is held in a governmental or proprietary capacity, and whether it was once subject to taxation or not. (Emphasis added)

The case at hand is very similar to the Duchesne County case. The Utah Constitution specifically exempts property of special districts and other political subdivisions of the state, and the UTA is certainly a special district and a political subdivision of the state and the lands owned by the UTA are exempt from ad valorem taxes, and that exemption may not be narrowed or broadened by the Legislature.

The County, in its brief, refers to the current Article XIII, Section 2, subsection (b) which provides as follows:

> (b) The property of counties, cities, towns, special districts, and all other political subdivisions of the state, except that to the extent and in the manner provided by the Legislature the property of a county, city, town, special district or other political subdivision of the state outside of its geographic boundaries as defined by law may by subject to the ad valorem property tax. (Emphasis added)

The County refers to the above emphasized portion of the Constitution, and them on pp 3-4 of its brief it says, "By implication, it would seem logical that the legislature is also empowered to limited in other respects the exemption granted to these entities. Appellant urges this Court to find that this is precisely what the legislature did in enacting U.C.A. Section 11-22-55. However, it is respectfully submitted that to interpret

the above constitutional provision to give the powers to the legislature as suggested by Appellant would require twisted contortions of jurisprudence principals. The Constitutional provision was carefully limited to permit one taxing entity to impose taxes on the property of another taxing entity when tne latter entity owns property that is located outside the geographic boundaries of the owning taxing entity. In the instant case, the geographic boundaries of UTA includes all of Salt Lake County (and numerous other areas) and the UTA owned property in question is located within Salt Lake County, which means that the UTA owned property is clearly within the geographic boundaries of the UTA. It is submitted that the purpose of that portion of the Utah Constitution was intended to take into consideration situations where a city, or other governmental entity, such as Bountiful City, which own a municipal power operation and constructs electric generation facilities outside its own geographical jurisdiction in another taxing district, such as Weber County. This provision of the Constitution was enacted to permit the taxation by Weber County of those types of facilities constructed by Bountiful City outside its geographic boundaries. This provision permits a governmental entity which must provide governmental services in the area in which those facilities have been constructed to have the tax base necessary to support the services. To argue to this Court that the subparagraph (b) of Article XIII, Section 2 of the Utah Constitution permits the legislature to limit property tax exemptions in other ways is a gross distortion of the

constitutional provision.

It is the position of the UTA that the legislature intended that all of the property of transit districts be exempt from taxation, irrespective of the use to which it is put. That position is sustained by the affidavits submitted by the chief Senate sponsor of Section 11-20-55 U.C.A., W. Hughes Brockbank, and by the chief House sponsor, Stanford P. Darger (R. 0064 to 0069). Further, any legislation to the contrary would be unconstitutional.

Therefore, it may be asked whether the UTA is challenging the constitutionality of U.C.A. Section 11-20-55? While the UTA does believe that the interpretation of that statue suggested by the County would render it unconstitutional, UTA is not at this time requesting a determination of its unconstitutionality. There are other ways of interpreting that statute and deciding this case without ruling that statute to be unconstitutional, and it is a maxim of constitutional interpretation that if a legislative enactment is subject to alternative interpretations and applications, one of which will render it constitutional and the other will render its constitutionality doubtful, the former should be chosen. Wagner v. Salt Lake City, 504 P.2d 1007, 29 Utah 2d 42, Gord v. Salt Lake City, 434 P.2d 449 20 Utah 2d 138. In this case, the Court may uphold the constitutionality of the last portion of U.C.A. Section 11-20-55 by ruling in either of the following ways.

First, by ruling that the UTA property in question (70 acres) is "used solely for transportation purposes or directly

connected therewith." The property is, in fact, owned by UTA only for transportation purposes. The property has no other active or inactive use or purpose other than transportation purposes. It was acquired to provide sufficient expansion room for when the UTA either expands its bus operation or commences the development of a high-speed light-rail system, or both. It was necessary to purchase the entire parcel of property at one time because of the absence of eminent domain powers by UTA. The road and sewer system have been installed with a view only to the future "transportation purpose" uses of the property. It is not uncommon for cities, counties, school districts, and other governmental entities to acquire vacant land and to hold that land for future expansion or development for uses as a park, school, or other governmental facilities, and it is well known that no property taxes are paid on those properties by the governmental entity between the date of acquisition and the date of development. Therefore, it is submitted that the land in question, in the absence of any other use, is being "used solely for transportation purposes or directly connected therewith" within the meaning of the statute, and the property is exempt from ad valorem taxes pursuant to the provisions of both the constitution and the statute.

Second, if the statute was truly intended to remove the tax exemption for property not used solely for transportation purposes, then taxation was intended only to the extent that it would be imposed by the privilege tax provisions of U.C.A. Section 59-13-73, 74, 75 and 76 upon the person or entity using

the tax exempt property for any other purpose. Since the property in question was not used by any other person or entity for any other purpose, the privilege tax provisions do not apply and the property remains exempt from taxes.

POINT II

PROPERTY OF ALL GOVERNMENTAL ENTITIES INCLUDING TRANSIT DISTRICTS, IS PRESUMED TO BE EXEMPT FROM AD VALOREM PROPERTY TAXES.

Salt Lake County, in its brief, represents that exemptions from taxation are to be strictly construed and all presumptions must be against any such exemptions. The County cites as authority for that proposition Parker v. Quinn, 23 Utah 332, 64 Pac. 961, wherein it states, at page 964:

> The general rule is that all property of what kind soever and by whomsoever owned is subject to taxation; and when any kind of property is exempt it constitutes an exception to this rule.

That statement of the law, is an accurate and correct statement of the law if the exemption being determined is being sought pursuant to the provision exempting property "used exclusively for, religious, charitable or educational purposes," because the status of the property is based upon the use of the property. (See also, Loyal Order of Moose #259 v. County Board of Equalization of Salt Lake County, 657 P.2d 257, Yorgason v. County Board of Equalization of Salt Lake County, ex rel., Episcapal Management Corporation, 714 P.2d 653, Utah County v. Intermountain Health Care, 709 P.2d 265, Salt Lake County v. Tax

Commission of the State of Utah ex rel., Laborers Local No. 295 Building Association, et al, 658 P.2d 1194). However, when the status of the property is based upon the ownership of the property such as for governmental entities (including special districts) the presumption is just the opposite, i.e., it is presumed that all real property owned by any governmental entity or public body is exempt from ad valorem property taxes. This principal is well stated by 71 Am Jur 2d, State and Local Taxation, Section 336, where it states:

> When public property is involved, exemption is the rule and taxation the exception. Certainly, the rule of strict construction may not be invoked against a municipality asserting an exemption. Public property is presumed to be exempt from the operation of general property tax laws. Tax statutes are construed not to embrace property of the government or its instrumentalities unless the legislative intention to include such property is plainly and clearly expressed. (Emphasis added)

This general statement of the law is in fact the exact holding of the Utah Supreme Court in City of Springville vs. Johnson, supra, and the Court therein expressed it as follows:

> The only question in the case is whether the real estate owned by the plaintiff, and described in the complaint, was liable to taxation for county, school, and territorial purposes in 1892. By legal implication and by express statute, it was so exempt. By a general provision the revenue law professes to make all property within the territory taxable. Even in the absence of any express exemptions, it is settled by the authorities that the property of a municipal corporation could not be subject to taxation under such general provision. It is a principle of interpretation of statutes that they do not apply to the sovereign, unless named. The state is sovereign, and all public corporations partake of sovereignty, and the rules exempting sovereigns apply to such corporations . . . In Van Brocklin v. State of Tennessee, 117 U.S. 151, 173.6 Sup. Ct. 670, the court

uses this language: "General tax acts of a state are never, without the clearest words, held to include its own property or that of its municipal corporations, although not in terms exempt from taxation. (Emphasis added)

The court then concluded with the statement:

The exemption is absolute, and depends upon no condition but ownership by the city." (Emphasis added)

Therefore, while the general presumption is that all property is subject to taxes, when the property is owned by a governmental entity or public body, the presumption is that the property is exempt from all taxes.

This presumption was stated by the Supreme Court of Pennsylvania in a case involving the tax exemption of property held by their State Employees Retirement System. In Commonwealth vs. Dauphin County, et. al., 6 A. 2d 870, 335 Pa. 177, the Court said:

> The ordinary presumption against exemption does not apply where the property involved is owned by the Commonwealth, since such property has for reasons of public policy been consistently recognized as free from taxation. See Mattern v. Canevin, 213 Pa. 588, 590, 63 A. 131. The construction in such cases should always be in favor of the Commonwealth. (Emphasis added)

Therefore, it is respectfully submitted that in the absence of a statute expressly imposing taxes upon the properties of the UTA, those properties should be presumed to be exempt from ad valorem property taxes.

CONCLUSION

In addition to being a special district as that term is used in the Utah Constitution, the UTA also believes that its properties would constitute "Property owned by a nonprofit entity which is used exclusively for . . . charitable . . . purposes" and is also exempt under that provision of Article XIII, Section 2 of the Utah Constitution, because such a small portion of the

actual cost of a bus ride is paid by the passengers and the balance is paid by Federal Grant and tax subsidy. However, since specific evidence on that issue was not submitted at the hearing, and since the Tax Commission did not make specific findings regarding the charitable nature of the UTA those exemption issues have not been addressed in this brief.

The Utah State Tax Commission did determine that the Utah Transit Authority is a Public Transit District under the Utah Public Transit District Act and a special district under Article XIII Section 2 of the Utah Constitution, and that the properties of UTA are, therefore, exempt from ad valorem taxes by the Utah Constitution, without the necessity of looking at the statutes or the use of the property. The ruling of the Tax Commission was correct and should be affirmed by this Court.

Respectfully submitted this 28th day of July, 1986.

G. Blaine Davis

William D. Oswald
by GBD

CERTIFICATE OF SERVICE

The undersigned hereby certifies that four (4) true and correct copies of the above and foregoing Brief of Respondent were mailed, postage prepaid, this 28th day of July, 1986, to:

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